

REMARKS**A. Status of the Claims**

Claims 16-21 and 27-40 are pending, with claims 27-30 being withdrawn from consideration. Currently, claims 16 and 32-40 are allowable, and claims 17-21 and 31 stand rejected.

Claims 17 and 20 have been amended. Support for the amendment(s) to claim 17 may be found in the specification as filed. *See, e.g., U.S. Patent Application Publication 2005/0070695*, at ¶¶ [0077], [0147], and Tables 5 and 6. Support for the amendment(s) to claim 20 may also be found in the specification as filed. *See, e.g., id.*, at ¶ [0056]. Accordingly, no new matter has been added by these amendments.

B. Claims 20 and 21 are not indefinite under 35 U.S.C. § 112, ¶2

The Office Action rejects claim 20 under 35 U.S.C. § 112, second paragraph as allegedly indefinite. Further, the Office Action rejects claim 21 as depending therefrom. As suggested by the Examiner, Applicants have amended the claim to recite “mammalian cells and insect cells.” Accordingly, Applicants respectfully request withdrawal of the Examiner’s rejection on this basis and immediate allowance of claims 20 and 21.

C. Claim 17 does not contain new matter under 35 U.S.C. § 112, first paragraph

The Office Action rejects claims 17-21 under 35 U.S.C. § 112, first paragraph as allegedly containing new matter. Further, the Office Action rejects claims 18-21 and 31 as depending therefrom. With acquiescing to the propriety of the rejection, Applicants have amended claim 17 to specify that claimed nucleic acid sequences includes a “variant” of SEQ ID NO. 1 encode for a “modified pneumolysin polypeptide” of SEQ ID NO. 3, with specific amino

acid substitutions or groups of substitutions as recited in the second half of the claim. Support for this amendment is found throughout the originally filed specification generally [e.g., see Table 6]. Applicants respectfully submit that no new matter has been added by this amendment.

In view of the amendments to claim 17, the rejections of this claim and corresponding dependent claims (claim 18-21) under 35 U.S.C. §112, ¶1 are believed to be moot. Applicants therefore request reconsideration and withdrawal of the ground of rejection.

D. Claims 17-21 and 31 are definite under 35 U.S.C. § 112, second paragraph

The Office Action rejects claim 17 under 35 U.S.C. § 112, second paragraph as allegedly indefinite. In particular, the Examiner states that the phrases ‘variants of the nucleic acid sequence of SEQ ID NO: 1, said variants including changes in the nucleic acid sequence of SEQ ID NO:1 that do not result in a change in the polypeptide encoded by the recombinant nucleic acid molecule’ and ‘said nucleic acid sequence’ are unclear and/or lack proper antecedent bases. Claims 18-21 and 31 are rejected as being indefinite due to their dependence from claim 17.

Without acquiescing to the Examiner’s allegation, and solely for the purpose of expediting prosecution, claim 17 has been amended as described above. In view of the foregoing amendment to claim 17, Applicants respectfully assert that this rejection has been rendered inapposite, and respectfully request its withdrawal as such. Accordingly, Applicants also respectfully request immediate allowance of claim 17-21 and 31.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **50-3732**, Order No. **13564-105004US3**. In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **50-3732**, Order No. **13564-105004US3**.

Respectfully submitted,
King & Spalding, LLP

Dated: March 18, 2009

By: /Joseph D. Eng, Jr./
Kenneth H. Sonnenfeld / Joseph D. Eng Jr.
Reg. No. 33,285 / Reg. No. 54,084

Customer Number 65989
Correspondence Address:
King & Spalding
1185 Avenue of the Americas
New York, NY 10036-4003
(212) 556-2100 Telephone
(212) 556-2222 Facsimile